

mons in chambers dated the 21st June, 1962. This application was made under Order 18, rule 4. This rule provides as follows:

"4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex parte on application to the Court or a Judge, upon an allegation of such change, or transmission of interest, or liability, or of such person interested having come into existence."

This rule has two limbs. I have underlined the material parts of the second limb because one of the allegations upon which the application was made relates to the second limb. The allegation was that the Bank Koperasi was a person interested who had come into existence after the commencement of this action. Both defendants were served with the application and did not oppose the application. As the Bank Koperasi was added as a plaintiff by an order of Court made under Order 18, rule 4, it seems to me a strange use of language to suggest that the joinder of the Bank Koperasi as a plaintiff was an improper joinder within the meaning of Order 16, rule 11. If counsel for the first defendant was of the opinion that the Judge who made the order under Order 18, rule 4, had erred, it seems to me that the first defendant, who was served with the order, should have applied to the Court below or a Judge to discharge the order under Order 18, rule 6, which provides as follows:

"6. Any person.....who is served with an order under rule 4, may apply to the Court or a judge to discharge or vary such order, at any time within twelve days from the service thereof."

Alternatively, the first defendant should have appealed to this Court. Such an appeal could not have been brought unless the Judge who made the order had certified, after application for further argument in Court, that he required no further argument, or unless leave had been obtained from a Judge or from this Court: see Order 51, rule 23, and section 30(2) of the Courts Ordinance. It seems extraordinary to me that the first defendant, instead of availing itself of either of these remedies, should seek to have recourse to a rule which, in my opinion, was never intended to deal with any complaints against an order made by a Judge for the joining of any person as a party and the carrying on of proceedings between the original parties and the new party. In my judgment, the application of the first defendant was clearly misconceived, and

A the Judge who heard the application was clearly right in dismissing it. I would therefore dismiss the appeal with costs.

Tan Ah Tah and Buttrose JJ. concurred.

Appeal dismissed.

B Solicitors:—Donaldson & Burkinshaw; Lee & Lee.

FAZIL RAHMAN & ORS. v. AR. S. NACHIAPPA CHETTIAR

[O.C.J. (Suffian J.) July 20, 1963]

[Alor Star—Petition No. 377 of 1960]

Administration—Appointment of creditor as administrator—Revocation of appointment—Consideration of due and proper administration of estate and interests of beneficiaries—Probate and Administration Ordinance, 1959, s.34—"For any sufficient cause."

D *Limitation—Statute-barred debt—Whether provable against insolvent estate—Probate and Administration Ordinance, 1959, First Schedule Pt. I.*

E S died in 1959 possessed of certain lands and leaving him surviving four children none of whom applied for letters of administration. In 1960 NC who said that he had in 1951 lent the deceased \$7,600 applied for letters of administration. Since none of the deceased's children (all of whom had been served) was present at the hearing the court granted administration to the applicant as creditor in 1961. In 1962 the attorney for the administrator applied for leave to sell all the deceased's estate, the proceeds to be applied to pay off the deceased's debt to the administrator to meet expenses of taking out the L.A., the sale and the payment of estate duty. The declared value of the estate was only \$14,600 and if the administrator were entitled to recover his debt which included principal and interest and which was *prima facie* statute barred there would be nothing left for any of the deceased's children. Accordingly they opposed the application and moved that the applicant's appointment as administrator be revoked and that they should be appointed administrators instead.

G **Held:** (1) as there was no allegation that the estate was not properly administered and the estate appeared to be insolvent, there was no sufficient cause to revoke the grant under section 34 of the Probate and Administration Ordinance;

(2) a statute-barred debt is not provable against an insolvent estate.

Cases referred to:—

- H (1) *In the Goods of William Loveday* [1900] P. 154.
(2) *Cotterell v. Price & Others* (1885) 29 Ch.D. 358 at p.360.

MOTION.

A. Jayadeva for the administrator.

Chang Min Tat for the deceased's children.

Cur. Adv. Vult.

Suffian J.: In this matter it is necessary for me to consider the principles on which the appointment of an administrator may properly be revoked.

Sulaiman Khan died on 20th April 1959 possessed of five pieces of land and a dwelling house and leaving him surviving four children aged 23, 21, 19 and 18. None of them applied for administration. On 22nd November 1960 AR.S. Nachiappa Chettiar, who said that he had on 18th May 1951 lent the deceased \$7,600, applied for administration. On 23rd February 1961 when the application came up for hearing, none of the deceased's children all of whom had been served was present and the court granted administration to the applicant as creditor.

On 17th December 1962 Arunasalam Chettiar as attorney for the administrator applied in Originating Summons No. 316 of 1962 for leave to sell the deceased's estate (saying that the deceased then owed the administrator principal as well as interest \$33,780), the proceeds to be applied to pay off the deceased's debt to the administrator, to meet the expenses of taking out letters of administration, the sale and the payment of estate duty. The declared value of the estate is only \$14,600 and if the administrator were entitled to recover his debt including interest there would be nothing left for any of the deceased's children. Accordingly they were galvanised into opposing the application and on 8th June 1963 moved that the applicant's appointment as administrator be revoked and that they should be appointed administrators instead.

They do not say that the administrator has in any way been guilty of any act of maladministration. They only say that (1) that the alleged debt of \$33,780 includes a claim for recovery of principal and interest which *prima facie* is statute-barred (2) if the administrator were granted leave to sell the estate and pay himself out of the proceeds he would be able to circumvent the law of limitation and (3) the proper course for the administrator is to sue for the debt and as he cannot sue himself his appointment as administrator should be revoked.

Section 34 of the Probate and Administration Ordinance No. 35 of 1959 says that I may revoke the administrator's appointment "for any sufficient cause." This is nowhere defined or explained by the Ordinance but Jeune P. says in *In the Goods of William Loveday*⁽¹⁾ at page 156.

"After all, the real object which the Court must always bear in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto....."

So what I have to consider here is whether the due and proper administration of the estate and the interests of the deceased's children require that the administrator's grant be revoked.

I do not think so.

A There is no allegation as already said that the administrator has in any way been guilty of maladministration.

B There is nothing in the point made by Inche Chang Min Tat that the administrator appears to be a professional moneylender. At the time of the loan (18th May 1951) the Moneylenders Ordinance No. 42 of 1951 had not been enacted and the only restrictions imposed on the rights of moneylenders in the State were those in section 85 of the Kedah Civil Procedure Code. Even these were repealed by 1950 Supreme Court Rule No. 3 on 1st September 1951, *vide* Federal Legal Notification No. 340 of 1950.

C As regards limitation, assuming that it applies, my refusal to revoke the administrator's appointment need not affect the children's interests in any way, for if the estate is insolvent (as appears to be the case) then by part I of the First Schedule to the Probate and Administration Ordinance 35 of 1959 after payment of the funeral, testamentary and administration expenses, "the same rules shall prevail and be observed as to....debts and liabilities provable [against the estate]....as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt." And it would appear from *Halsbury's Laws of England*, 3rd edition, volume 2, para 924 that the statute-barred debt is not provable against a bankrupt and from *Cotterell v. Price & Others*⁽²⁾ that this is so even in the case of a secured debt.

F Accordingly I dismiss this Motion, the taxed costs of the parties on a solicitor and client basis to be paid out of the estate. In the result, the administrator's application in Originating Summons No. 316 of 1962 will be brought up for consideration on a date to be fixed by the Assistant Registrar.

Motion dismissed.

Solicitors:—Jayadeva & Zahir; Chang Min Tat.

H HERON, GETHIN-JONES & LIOW v. JOHN CHONG

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Buttrose JJ.) July 23, 1963]

[Singapore — Civil Appeal No. 7 of 1963]

I Master and servant—Contract of service—Construction of terms of contract—Whether payment in lieu of notice implied—Plaintiff claiming for breach of contract—No alternative claim for liquidated damages—Whether omission of such a plea fatal.

This was an appeal against a successful claim by the respondent for liquidated damages for breach of